FILED JANUARY 10, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **ALAN MARK SCHNITZER,** **Member No. 129024,** A Member of the State Bar.	)	Case No.: **11-O-15519-RAH** **DECISION**

Introduction[1]

In this original disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges that respondent Alan Mark Schnitzer, in willful violation of section 6068, subdivision (a) (obey the laws of the United States and of this state) and section 6106 (proscribing acts involving moral turpitude), engaged in the unauthorized practice of law (UPL) while he was involuntarily enrolled as an inactive member of the State Bar of California.

For the reasons set forth below, the court finds that respondent engaged in UPL while inactive in willful violation of section 6068, subdivision (a), but not section 6106. The court concludes that the appropriate level of discipline for the found misconduct is three years' stayed suspension and three years' probation on conditions, including eight months' actual suspension.

Senior Trial Counsel Michael J. Glass and Deputy Trial Counsel Anand Kumar represented the State Bar. Respondent represented himself.

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[1] Unless otherwise indicated, all references to "rules" refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

Significant Procedural History

The State Bar filed the notice of disciplinary charges (NDC) in this matter on May 24, 2012. Respondent filed his response to the NDC on July 12, 2012. On September 25, 2012, the parties filed a "stipulation as to undisputed facts and admission of documents,"[2] and the trial began. After the trial ended, the court took the case under submission for decision on October 12, 2012.

Also, on October 12, 2012, respondent filed a motion to dismiss the proceeding, which the State Bar opposes. Respondent's motion to dismiss is premised on his contention that the March 3, 2011 State Bar Court order referred to in footnote 2 below was not served on him. However, as noted on page numbers 3 and 4 below, that March 3, 2011 order was, in fact, properly served on respondent by certified mail on March 3, 2011. In short, respondent's October 12, 2012 motion to dismiss this proceeding is DENIED.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 17, 1987, and has been a member of the State Bar of California since that date.

Facts

Respondent's Involuntary Inactive Enrollment

As discussed in more detail below, respondent has two prior records of discipline. Respondent participated in his first prior record, but defaulted in his second prior record. As explained below, respondent's default in his second prior record of discipline led to his

[2] In stipulated fact number 16, the parties stipulate that, under a March 3, 2011 State Bar Court order in one of respondent's prior disciplinary proceedings, "Respondent has been on inactive status as a member of the State Bar [of California] since March 6, 2011 to the present." That is not a stipulated fact; it is a stipulated conclusion of law, which the court rejects because, as noted on page number 4 below, respondent's inactive enrollment under the March 3, 2011 State Bar Court order terminated on June 16, 2012, as a matter of law.

involuntary enrollment as an inactive member of the State Bar of California, which then disqualified respondent from acting as an attorney in this state.

Respondent's second prior record of discipline is Supreme Court case number S198609 (State Bar Court case number 08-H-14123) (*Schnitzer* II). In *Schnitzer* II, the State Bar filed and properly served the NDC on respondent on December 16, 2010. Respondent's response to that NDC was due in January 2011. In about February and March 2011, respondent and Deputy Trial Counsel Mia Ellis (DTC Ellis) traded correspondence over respondent's failure to timely file a response to the NDC in *Schnitzer* II. Even though respondent told DTC Ellis that he would be filing a response to the NDC in *Schnitzer* II, respondent never did so.

Thus, on the motion of the State Bar, the State Bar Court filed an order entering respondent's default in *Schnitzer* II on March 3, 2011. In that same order, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California.[3] (§ 6007, subd. (e); former rule 500, Rules Proc. of State Bar [now Rules Proc. of State Bar, rule 5.250(A)&(C)].) Under the terms of that order, respondent's involuntary inactive enrollment and consequent disqualification to act as an attorney in this state began on March 6, 2011.

The State Bar Court's March 3, 2011 order entering respondent's default in *Schnitzer* II and enrolling him inactive was properly served on respondent by certified mail, return receipt requested, at his then latest address shown on the official membership records of the State Bar of California. (§ 6002.1, subd. (c); former rules 60, 200(c), 500, Rules Proc. of State Bar [now Rules Proc. of State Bar, rule 5.25, 5.80, and 5.250(B), respectively]; *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 319 [involuntary-inactive-enrollment orders do not have to be served by personal service].) That service was deemed complete when mailed

[3] Respondent's default in *Schnitzer* II was entered under former rule 200 of the Rules of Procedure of the State Bar and not under (current) Rules of Procedure of the State Bar, rules 5.80 and 5.82.

regardless of whether respondent actually received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; see also *In the Matter of Heiner, supra*, 1 Cal. State Bar Ct. Rptr. at p. 319; but see *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Thereafter, on June 22, 2011, this court filed and properly served on the parties its default decision in *Schnitzer* II. In that decision, this court recommended that respondent be placed on (1) two years' stayed suspension and (2) six months' actual suspension continuing until respondent made and the State Bar Court granted a motion to terminate the actual suspension under former rule 205 of the Rules of Procedure of the State Bar (minimum six-month actual suspension).

On August 1, 2011, respondent filed a motion to vacate his default in *Schnitzer* II, which this court denied on August 31, 2011.

On May 17, 2012, the Supreme Court filed an order in *Schnitzer* II in which it imposed this court's recommended discipline of a two-year stayed suspension and a minimum six-month actual suspension on respondent. That Supreme Court order became effective and respondent's minimum six-month actual suspension began on June 16, 2012. (Cal. Rules of Court, rule 9.18(a).) Moreover, respondent's involuntary inactive enrollment under the March 3, 2011 State Bar Court order in *Schnitzer* II terminated, as a matter of law, on the June 16, 2012, the effective date of the Supreme Court order in *Schnitzer* II.[4] (§ 6007, subd. (e)(2); former rule 501(b), Rules Proc. of State Bar [now Rules Proc. of State Bar, rule 5.251(C)].)

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[4] On October 10, 2012, this court filed an order in *Schnitzer* II in which it granted respondent's motion to terminate the minimum six-month actual suspension imposed on him in that proceeding. (See former rule 205, Rules Proc. of State Bar.) Under the terms of that October 10, 2012 order, respondent's actual suspension in *Schnitzer* II will terminate (or has terminated) on the later of (1) December 16, 2012, or (2) on respondent's payment of all applicable bar fees and previously assessed disciplinary costs.

As noted in more detail below, respondent suffered from cancer and received chemotherapy and radiation treatments from about 2010 through 2012. One of the attended results of respondent's cancer and cancer treatments was that respondent did not learn of the March 3, 2011 State Bar Court order in *Schnitzer* II or of his involuntary inactive enrollment under that order until sometime after July 26, 2011. That lack of knowledge caused respondent to unknowingly engage in UPL during the 34-day period from June 22, 2011, through July 26, 2011.

Respondent's UPL

Respondent began representing David Spencer in a marital-dissolution action styled *David Spencer v. Terry Spencer* in the Orange County Superior Court in September 2009.

On June 22, 2011, respondent sent a letter to Attorney Lisa Stribling, who represented Terry Spencer. With that letter, respondent included his client's (i.e., David Spencer's) responses to two sets of discovery that Terry Spencer had previously propounded. Respondent signed the discovery responses as David Spencer's attorney of record in the dissolution proceeding.

Also, on June 22, 2011, as David Spencer's attorney of record, respondent propounded a set of interrogatories to Terry Spencer.

On June 27, 2011, respondent sent Attorney Stribling another letter. With his June 27, 2011 letter, respondent included an updated report on David Spencer's income and expenses.

On July 11, 2011, respondent sent Attorney Stribling another letter and included an "amended" updated report on David Spencer's income and expenses.

On about July 13, 2011, as David Spencer's attorney of record, respondent signed an application for an order to show cause (OSC) regarding property distribution. On July 15, 2011, respondent filed, in the superior court, that application together with a supporting declaration and

the "amended" updated report on David Spencer's income and expenses. The hearing on the application for an OSC was scheduled for August 15, 2011.

On July 19, 2011, on behalf of his client David Spencer, respondent propounded a demand for production of documents to Terry Spencer. Finally, on July 26, 2011, respondent sent Attorney Stribling a letter regarding David Spencer's claim for reimbursement of funds.

Respondent wrote each of the foregoing letters to Attorney Stribling on his law-office letterhead and signed each of the letters: "Alan M. Schnitzer [¶] Attorney at Law."

Each of respondent's foregoing acts constitute the actual practice of law and involve respondent holding himself out as entitled to practice law in California.

On August 15, 2011, respondent signed a substitution-of-attorney form in which Attorney Jeffrey Cottrell was substituted for respondent as David Spencer's attorney of record in the *David Spencer v. Terry Spencer* dissolution proceeding. Thereafter, David Spencer filed that substitution-of-attorney form in the superior court on September 9, 2011.

Respondent's Medical Issues

In about December 2010, respondent started receiving treatment for his Stage IV Squamous Cell carcinoma cancer in his head, at the base of his tongue, and neck. Respondent's cancer was so advanced that the tumor had crossed the mid-line on his tongue so that he was not a candidate for robotic surgery and that respondent suffered many debilitating effects, including nausea, fatigue, general malaise, lack of sleep and muscle weakness.

Respondent first received induction chemotherapy. Then, in late February 2011, respondent began receiving radiation treatments in addition to the chemotherapy. He was scheduled for 40 radiation treatments, during which respondent was strapped to a table with a mask to prevent him from moving his head and disturbing the accuracy of the radiation.

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Respondent continued with these treatments from February to June 2011. During that time, respondent's general health deteriorated progressively because of the cumulative effects of his chemotherapy and radiation treatments.

At respondent's election, he received two forms of chemotherapy, rather than just one form. This combination was undertaken to more aggressively attack the cancer, but it had the effect of increasing his side effects, including exacerbating the problems of sleeplessness, mouth sores, nausea, mental fatigue, weight loss, muscle atrophy, and feeling of complete malaise. During this time, the combination of the physical effects of the cancer and respondent's treatment regimen and of the psychological difficulties respondent incurred while battling a life-threatening disease, significantly reduced respondent's mental and physical capacities.

In March 2011, he developed more severe mouth sores and a sore throat, making it difficult to eat and swallow. As a result, he required a G-tube to provide him adequate nutrition. Even with this additional assistance, he lost 55 pounds in weight through June 2011.

After the completion of 33 sessions of radiation, concurrent with his chemotherapy, respondent was given brachytherapy. This required a four-day hospital stay, from May 17 to 20, 2011, during which twelve plastic catheters were lodged in the area under his chin and directly adjacent to the tumor site. For the first three days, he was connected to a machine twice a day for 15 minutes, to direct radiation more precisely on the tumor. On the first and third days, he was also given hyperthermia treatments, involving connecting the same catheters to a microwave hyperthermia machine that heated the tumor and worked synergistically with the radiation. These sessions lasted an hour each.

As part of the brachytherapy, he was also given a tracheotomy to prevent respiratory problems associated with edema, causing a closure of the air passage. After the brachytherapy,

the tracheotomy was removed and the incision site was allowed to close and heal over the next two months.

After each of his treatments/procedures, respondent was thoroughly depleted in terms of energy and stamina; he was physically and mentally drained and suffered severe pain. In October 2011, respondent had surgery on his neck to remove some remaining dead tumor tissue and lymph nodes and to provide him with "clean margins" so that there would be a reduced risk of the cancer's return.

Conclusions of Law

Count One - (§ 6068, subd. (a) [Support Constitution and Laws of United States and California])

Section 6068, subdivision (a) requires that an attorney "support the Constitution and laws of the United States and of this state."

Section 6125 provides that only active members of the State Bar may lawfully practice law in California. And section 6126, subdivision (b) provides that it is a crime for an attorney who has been involuntarily enrolled inactive, suspended, or disbarred from practice or who has resigned from the State Bar with disciplinary proceedings pending (1) to practice or to attempt to practice law or (2) to advertise or hold himself or herself out as practicing or entitled to practice law. An attorney's violation of either section 6125 or 6126 is disciplinable because it violates the attorney's duty, under section 6068, subdivision (a), to support the laws of this state. (E.g., *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 236, 237; *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

As charged in count one, the record clearly establishes that, while respondent was involuntarily enrolled as an inactive member of the State Bar of California, respondent held himself out as entitled to practice law and, in fact, actually practiced law from June 22 through July 26, 2011, in willful violation of sections 6125 and 6068, subdivision (a). Respondent

violated sections 6125 and 6068, subdivision (a) when, as set forth above, respondent, as David Spencer's attorney of record in the dissolution proceeding, corresponded with Attorney Stribling, responded to and propounded discovery requests, and drafted and signed pleadings that were filed in the superior court during the time period from June 22 through July 26, 2011.[5]

Count Two - (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving moral turpitude, dishonesty, or corruption constitutes cause for suspension or disbarment. In count two, the State Bar charges that respondent's UPL in the Spencer dissolution proceeding involved moral turpitude in willful violation of section 6106. Specifically, the State Bar charges that respondent violated section 6106 "By intentionally, or with gross negligence, misrepresenting that he was an active member of the State Bar [of California] while he was on inactive status, by concealing [his inactive status] from the [superior] court, opposing counsel, and the public, and by practicing law while [enrolled inactive]." The record, however, fails to establish, by clear and convincing evidence, any of the misconduct charged in count two.

More than 22 years ago, the review department made clear that the unauthorized practice of law, even in deliberate or knowing violation of sections 6125 and 6126, does not inherently involve moral turpitude or necessarily involve deception or misrepresentation. (*In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at p. 239; see also *In the Matter of Heiner, supra*, 1 Cal. State Bar Ct. Rptr. at p. 319.) "Violation of section 6125 and 6126 appears to fall into the category of conduct which may or may not involve moral turpitude as defined by the Supreme Court precedent in attorney disciplinary proceedings." (*In the Matter of Trousil, supra*, 1 Cal.

[5] Contrary to the State Bar's assertion, signing a substitution-of-attorney form withdrawing from representation in a matter does not involve UPL. Furthermore, to the extent that State Bar exhibit 29 might establish an uncharged instance in which respondent engaged in UPL, the court declines to find such an uncharged instance of UPL for the same reasons that the court denied the State Bar's motion to amend the NDC. (See September 21, 2012 order denying motion to amend NDC.)

State Bar Ct. Rptr. at p. 239.) Thus, the court must "examine the record as a whole" to determine whether respondent's UPL involves moral turpitude in willful violation of section 6106.

As stated above, respondent did not learn of the March 3, 2011 State Bar Court order in *Schnitzer* II or of his involuntary inactive enrollment under that order until sometime after July 26, 2011. The court rejects the State Bar's contention that respondent is culpable of willfully violating section 6106 because he was allegedly somehow "grossly negligent in not knowing, that he was on inactive status and not eligible to practice law" in June and July 2011 when he represented David Spencer in the dissolution proceeding. First, the State Bar cites no authority for its contention that an attorney's gross negligence always violates section 6106. Second, respondent's own testimony, which the court finds credible, and respondent's medical records establish that respondent was not grossly negligent as the State Bar alleges. Without question, respondent's ability to function was dramatically reduced throughout much of 2010 and 2011 by his cancer and by the extraordinarily debilitating cancer treatments he received in those years. In sum, respondent's lack of knowledge of the March 3, 2011 order and of his inactive status preclude a finding of moral turpitude under the record in this proceeding. (*In the Matter of Heiner, supra,* 1 Cal. State Bar Ct. Rptr. at p. 319.)

Count two is DISMISSED with prejudice.

Aggravation[6]

Prior Records of Discipline (Std. 1.2(b)(i).)

As noted above, respondent has two prior records of discipline. In 2007, respondent was publicly reproved with conditions attached in State Bar Court case number 05-O-05359 (*Schnitzer* I) for failing to competently perform legal services (rule 3-110(A)) and for failing to

[6] All references to "standards" (or "Stds.") are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

adequately communicate (§ 6068, subd. (m)) in two separate client matters. In *Schnitzer* I, respondent received mitigation for personal problems arising out of a difficult dissolution of his marriage and related custody issues. However, in aggravation, the misconduct harmed the clients. The discipline in *Schnitzer* I was imposed in accordance with a stipulation as to facts, conclusions of law, and disposition that respondent entered into with the State Bar.

As noted above, in *Schnitzer* II, the Supreme Court placed respondent on two years' stayed suspension and a minimum six-month actual suspension. That discipline was imposed in respondent because he was found to have (1) altered the date on the summons and complaint in a personal injury case in an attempt to make it appear as though he had filed the complaint within the statute of limitations (§ 6106) and (2) failed to comply with three of the conditions attached to the public reproval imposed on him in *Schnitzer* I (rule 1-110). Specifically, respondent failed to complete six hours of minimum continuing legal education courses, to timely file four of his reproval reports, and to meet with his assigned probation deputy.

Significant Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

The State Bar contends that respondent's misconduct caused significant harm. However, there is no credible evidence in the record that supports a finding of harm separate and apart from the harm that is inherent in UPL. Accordingly, no finding in aggravation based on *significant* harm to a client, the public, or the administration of justice may properly be made. (Cf. *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 684; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 203; see also *In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at p. 240.)

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Mitigation

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)

As a result of his serious illness described above, respondent suffered from extreme physical and concomitant emotional difficulties during the very period of time as the found misconduct. Respondent testified credibly, which testimony was supported by medical reports and records, that he was all but completely unable to function as a result of his cancer and his cancer treatments during the time that he committed the misconduct.

Discussion

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Ba*r (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylo*r (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

The applicable standard for respondent's violations of sections 6125 and 6068, subdivision (a) is standard 2.6, which provides for "disbarment or suspension depending on the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3." Also relevant in this proceeding is standard 1.7(b), which provides that when an attorney has two prior records of discipline, the degree of discipline in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate. Notwithstanding its unequivocal language to the contrary, it has been well established for more than 20 years that disbarment is not mandated under standard 1.7(b) even if there are no compelling mitigating circumstances that predominate in a case. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.)

A disbarment recommendation under standard 1.7(b) is not to be made solely on the mere number of times a respondent has been disciplined. To conclude otherwise would require this court and the Supreme Court to blindly treat all prior records of discipline as equally aggravating. A disbarment recommendation under standard 1.7(b) is to be made only after the court has examined the nature and extent of the respondent's prior records of discipline and given due regard to the facts and circumstances of the present misconduct. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.)

With respect to standard 1.7(b), the court finds that it would be manifestly unjust to disbar respondent for his present misconduct merely because he has two prior records of discipline. Moreover, respondent's two prior records of discipline are not sufficiently serious to elevate the discipline in the present proceeding to disbarment. (See *Arm v. State Bar, supra*, 50 Cal.3d at p. 780.) Nonetheless, in light of respondent's prior discipline, the court concludes that it appropriate to apply standard 1.7(a), which provides that, when an attorney has one prior record of discipline, "the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

The court finds *Farnham v. State* Bar (1988) 47 Cal.3d 429, *In the Matter of* Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, and *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639 instructive on the level of discipline.

In *Farnham*, the attorney was placed on six months' actual suspension for UPL and for abandoning the client in two separate client matters. In *Wyrick*, the attorney also given six months' actual suspension for deliberately failing to disclose his suspension on two employment applications and for serving as a judicial arbitrator while suspended in violation of former rule

1604(b) of the California Rules of Court. The attorney in *Wyrick* had one prior record of discipline

In *Mason*, the attorney was placed on three years' stayed suspension and three years' probation with conditions, including a ninety-day actual suspension. In that case, the attorney deliberately and knowingly engaged in the unauthorized practice of law and committed an act involving moral turpitude by making a court appearance for a client while the attorney was suspended from the practice under a Supreme Court disciplinary order. In *Mason*, the attorney had one prior record of discipline, which involved serious misconduct. In addition, the attorney committed multiple acts of misconduct, which included an act of uncharged UPL (i.e., the attorney signed and served a trial brief in the same case in which he appeared while suspended). In mitigation, the attorney in *Mason* had an extensive record of pro bono activities.

On balance and in light of respondent's prior records of discipline, the court finds that the appropriate level of discipline to recommend in the present proceeding is three years' stayed suspension and three years' probation with conditions, including an eight-month period of actual suspension.

Recommendations

Discipline

It is recommended that respondent Alan Mark Schnitzer, State Bar Number 129024, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that respondent be placed on probation for a period of three years subject to the following conditions:

1. Alan Mark Schnitzer is suspended from the practice of law for the first eight months of his probation.

2. Alan Mark Schnitzer is to comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar, and all of the conditions of this probation.

3. Within 30 days after the effective date of the Supreme Court order in this proceeding, Alan Mark Schnitzer must contact the State Bar's Office of Probation in Los Angeles and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Alan Mark Schnitzer must meet with the probation deputy either in-person or by telephone. Thereafter, Alan Mark Schnitzer must promptly meet with the probation deputy as directed and upon request of the Office of Probation.

4. Alan Mark Schnitzer is to maintain, with the State Bar's Membership Records Office in San Francisco and Office of Probation in Los Angeles, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes (Bus. & Prof. Code, § 6002.1, subd. (a)(1)). In addition, Alan Mark Schnitzer is to maintain, with the State Bar's Office of Probation, his current home address and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Alan Mark Schnitzer's home address and telephone number are not to be made available to the general public unless his home address is also his official address on the State Bar's Membership Records. (Bus. & Prof. Code, § 6002.1, subd. (d).) Alan Mark Schnitzer must notify the Membership Records Office and the Office of Probation of any change in this information no later than 10 days after the change.

5. Alan Mark Schnitzer is to submit written quarterly reports to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10, and October 10 of each year. Under penalty of perjury under the laws of the State of California, Alan Mark Schnitzer must state in each report whether he has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar, and all conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

   In addition to the quarterly reports, Alan Mark Schnitzer is to submit a final report containing the same information during the last 20 days of his probation.

6. Subject to the assertion of any applicable privilege, Alan Mark Schnitzer is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.

7. This probation will commence on the effective date of the Supreme Court order in this proceeding. At the expiration of the period of this probation, if Alan Mark Schnitzer has complied with all the terms of probation, the order of the Supreme Court suspending him from the practice of law for three years will be satisfied and that suspension will be terminated.

Professional Responsibility Examination

Because the Supreme Court recently ordered Alan Mark Schnitzer to take and pass the Multistate Professional Responsibility Examination in *Schnitzer* II and because he will be

actually suspended from the practice of law if he fails to comply with that order, this court does not recommend that Schnitzer be again ordered to take and pass the examination in this proceeding.

California Rules of Court, Rule 9.20

It is further recommended that Alan Mark Schnitzer be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: January 10, 2013.

RICHARD A. HONN
Judge of the State Bar Court